IN THE HIGH COURT OF JUDICTURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Tara Chand & ors. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No.432/2007

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Date of Order: July 16, 2007

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Pradeep Shah, for the petitioners.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
Mr. Umesh Shrimali, for the respondent No.2.

BY THE COURT:

By the instant criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), the petitioners have challenged the order dated 22-1-2007 passed by the Judicial Magistrate, Sumerpur (for short, "the trial Court" hereinafter), whereby the trial Court allowed the application filed by the complainant-respondent No.2 under Section 91 read with Section 294 of the Code.

Heard learned counsel for the parties.

The facts and circumstances giving rise to the instant petition are that respondent No.2 lodged an FIR with Police

Station, Sumerpur. After thorough investigation, the police submitted the final report; however, on a protest petition, the trial Court took cognizance of the offences under Sections 147, 427 and 448 IPC against the petitioners.

The matter before the trial Court is titled as State Vs. Tara Chand & ors. Thus, the prosecution has been conducted by the State. It is not a complaint case. During trial of the case, the statements of some of the prosecution witnesses have been recorded. After recording the statements of various witnesses, it appears that the respondent No.2, the first informant, filed certain documents stating therein that some other persons, namely Nain Mal, Ganesh Mal and Lumba Ram also encroached the land of the municipality and their encroachments have not been removed.

Be that as it may, in my view, in a State case, the complainant has a very limited scope and that is limited only to assist the Public Prosecutor. The complainant has no locus to take over the prosecution case from the Public Prosecutor.

Respondent No.2 is the first informant, who has sought production of certain documents in the trial court. Section 91 of the Code provides that whenever any Court or any officer-in-charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding

under this Court by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power sch document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order. Therefore, in my view, the trial Court fell in error in ignoring the provisions of Section 91 of the Code and allowing the application filed by the complainant-respondent No.2. In this view of the matter, the impugned order cannot be sustained and it is liable to be set aside.

The criminal miscellaneous petition is allowed and the impugned order dated 22-1-2007 is set aside.

(H.R. PANWAR), J.

mcs